
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEB 24 1997

In the matter of

Implementation of Section 273 of the
Communications Act of 1934, as amended
by the Telecommunications Act of 1996

CC Docket No. 96-254

COMMENTS OF AMERITECH

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Contents

SUMMARY.....	ii
I. Removal of the Restriction Under Section 273(a).....	2
A. Only the BOCs, and Not Their Subsidiaries, Are Currently Barred from Telecommunications Equipment Manufacturing.....	2
B. Manufacturing Authority Is Effective Everywhere As Soon As In-Region InterLATA Relief Is Obtained in One State.....	5
C. Joint BOC Manufacturing Is Prohibited.....	6
D. Section 273's Conditions Apply Only to BOCs Actually Engaged in Manufacturing	7
II. Section 273(b): Collaboration, Research, and Royalties	10
A. The Act Does Not Prohibit Collaboration Among RBOCs.....	10
B. No Further Rules Are Necessary for Manufacturing Research or Royalties.	14
III. Information Disclosure Under Section 273(c).....	18
A. No Further Network Disclosure Requirements Need Be Imposed Under Section 273(c)(1).....	19
B. The "Tension" Between Collaboration and Disclosure Exists Only in the Case of the BOC's Manufacturing Affiliate.....	21
IV. General Manufacturing Safeguards Under Section 273(d).....	24
A. Section 273(d)(4)(A) Should Be Narrowly Construed.	24
B. The Commission Should Narrowly Construe Product Certification Under Section 273(d)(4)(B).	27
C. No Rules Are Needed To Define Monopolization Under Section 273(d)(4)(C).....	28
D. The Commission Should Refrain from Defining the Term "Preferential" in Section 273(d)(4)(C).....	30
V. Section 273(e): BOC Equipment Procurement and Sales.....	31
A. No Further Definition of the Term "Consider" Is Necessary or Appropriate in Section 273(e)(1)(A).	31
B. A Manufacturer Paying Royalties to the BOC Is Not a "Related Person" in Section 273(e)(1).....	32
C. "Equipment" in Section 273(e)(2) Is Limited to Telecommunications Equipment and CPE.....	33
D. No New Rules Are Needed To Interpret the Joint Network Planning Requirements of Section 273(e)(3).	36

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SUMMARY

Ameritech supports the Commission's tentative conclusion that the grant of interLATA authority under Section 271 in any one in-region state is sufficient to authorize manufacturing under Section 273 by that BOC or its affiliates without geographic limitation. Ameritech also agrees with the tentative conclusion that joint manufacturing is not permitted among unaffiliated BOCs, but opposes extending this rule to prevent a BOC even from *collaborating* with an unaffiliated BOC, an interpretation that has no support in the statutory language or the Congressional intent. Such a rule might serve only to require an existing manufacturer acquired by a BOC to stop supplying products to the other RBOCs in order not to seem to be collaborating with them, which was not the result intended by Congress.

Ameritech also urges the Commission to conclude that the information disclosure rules of Section 273(c) and the equal procurement rules of Section 273(e) do not apply to a BOC unless and until that BOC is actually engaged in manufacturing. Even though this statutory limitation is not monotonously repeated in each and every sub-sub-paragraph where there might be an issue, the express language of the overall enabling provision in Section 273(a) makes clear that all of the

BOC requirements that follow have been put there solely to function as the continuing limitations upon BOC authority to engage in manufacturing, rather than to be stand-alone provisions that would apply to a BOC that had not yet engaged, and indeed might never engage, in any manufacturing activities. Besides, there is nothing whatever in the legislative history to support a contrary view.

The Commission has recently imposed such extensive network disclosure requirements upon the BOCs in favor of the public in the interconnection proceedings that no new disclosure rules are needed to accommodate any special needs on the part of competing manufacturers. Also, the “tension” between the network disclosure rules and the rule permitting collaboration with manufacturers should be resolved in favor of collaboration where the collaborating manufacturer is not the BOC’s own Section 272 affiliate.

In regard to the rule of Section 273(e)(1) that the BOCs in their procurement may not discriminate in favor of “equipment produced or supplied by an affiliate or related person,” Ameritech submits that Congress did not intend for a manufacturer to be deemed a “related person” solely by reason of entering into a royalty agreement with the BOC. Also, in Section 273(e)(2), which requires objective procurement procedures for “equipment, services, and software,” it is plain that the only relevant “equipment” is telecommunications equipment and customer premises equipment — that is, the types of equipment for

which special BOC manufacturing permission is required under the Telecommunications Act . It is also plain that the only “services” subject to Section 273(e)(2) are those services (such as maintenance or employee training) that a manufacturer customarily provides in connection with the supplying of telecommunications equipment and customer premises equipment, and that the “software” subject to that subsection is limited to that which is integral to the operation of those types of manufactured equipment.

Ameritech also urges the Commission not to adopt new rules to interpret the joint network planning requirements of Section 273(e)(3). The statute’s adoption of an antitrust collusion test makes a case-by-case approach far more desirable than the promulgation of extensive rules in advance. Moreover, the need to coordinate the requirements of Section 256 with those of Section 273(e)(3) should compel the Commission to refrain from adopting rules and definitions at this time.

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In 1982, as an aspect of the Bell System divestiture, Judge Harold Greene imposed a manufacturing prohibition upon the soon-to-be-divested Bell Operating Companies, even while conceding that in the trial before him that preceded the decree, "the government's procurement case was not extremely strong."¹ The weaknesses of that original

¹ United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 163 n.137 (D.D.C. 1982), *aff'd mem. sub nom.* Maryland v. United States, 460 U.S. 1001 (1983). The Court also said: "In reviewing the proof on anticompetitive behavior in the equipment market — even before divestiture — the Court found that the government's evidence on that aspect of the case was less convincing than, for example, on that involving intercity services. . . . Thus, at a minimum the factual predicate for drastic restrictions in the equipment area is not as apparent as it might be with respect to other subjects." *Id.*, 552 F. Supp. at 174.

case, however, have had no effect upon the longevity of the resulting restriction, which is now nearing its fifteenth anniversary. However, with the passage of Section 273 of the Telecommunications Act of 1996, Congress has provided for the long-overdue removal of this antique prohibition. Ameritech² hereby responds to the Notice of Proposed Rulemaking³ the Commission has issued to consider the manufacturing restriction and its removal under Section 273 of the Telecommunications Act.

I. Removal of the Restriction Under Section 273(a).

A. Only the BOCs, and Not Their Subsidiaries, Are Currently Barred from Telecommunications Equipment Manufacturing.

Section 273 is in many respects one of the more unusual sections of the Telecommunications Act. First, it provides for the removal of the manufacturing restriction based not upon consideration of the particular merits of that restriction in its own right, but as an auto-

² Ameritech comprises Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and other affiliates.

³ In the Matter of Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, CC Docket No. 96-254, Notice of Proposed Rulemaking, FCC 96-472 (released Dec. 11, 1996) [hereinafter cited as "NPRM"].

matic addition to any grant of in-region relief from the interLATA restriction according to Section 271.⁴ Also, its language is unclear in certain respects, and often its meaning must be inferred from the circumstances. For example, although Section 601 of the Act unmistakably abolishes the manufacturing restriction that was formerly contained in the AT&T decree,⁵ Section 273 — and this is in distinct contrast to the treatment of interLATA services in Section 271⁶ — omits to re-impose that manufacturing prohibition upon the BOCs

⁴ The language of subsection 273 (a) states:

(a) AUTHORIZATION — A Bell operating company may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, if the Commission authorizes that Bell operating company or any Bell operating company affiliate to provide interLATA services under section 271(d), subject to the requirements of this section and the regulations prescribed thereunder, except that neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.

⁵ Section 601(a)(1) provides:

Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

⁶ Section 271 is, in comparison, well coordinated with Section 601's abolition of the decree's interLATA prohibition, since 271(a) expressly declares, "Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section." Section 273, of course, contains no corresponding prohibition against BOC manufacturing, and none is found elsewhere in the Act.

before going on to describe the circumstances under which they may obtain relief from it. Thus, if the statute is read literally, today it is no longer illegal for a BOC to engage in the manufacturing of telecommunications equipment — such a prohibition is merely *implied* by the existence of a process by which permission to manufacture may be obtained. The omission of any direct prohibitory language aptly illustrates that the meaning of some parts of Section 273 must be discerned from Congress's evident purpose, rather than from the particular words it chose to use.

Moreover, since the manufacturing prohibition is not imposed directly, but must be inferred from the need to seek manufacturing permission, the extent of the prohibition can only be determined by examining the scope of the permission, and thus the only tenable reading of the statute is that it is *only* the BOCs themselves, and not their subsidiaries, that are currently barred from telecommunications equipment manufacturing. This is because the permissive language of Section 273(a) says, “A *Bell operating company* may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, if the Commission authorizes” it to do so [italics added]. Inasmuch as “Bell operating company” is very precisely

defined so as *not* to include a BOC's non-telephone subsidiaries,⁷ and since there is no other part of the Act that purports to impose a manufacturing restriction on either a BOC *or* a BOC subsidiary, it follows inescapably that non-successor affiliates of the BOC (such as a BOC's cellular affiliate, for example) are *already* authorized to engage in the manufacturing and provision of telecommunications equipment and the manufacturing of customer premises equipment and have been so authorized ever since the day the statute was enacted. Although this point is not even discussed in the NPRM, the Commission has no choice, under the statutory language, but to adopt this interpretation.

B. Manufacturing Authority Is Effective Everywhere As Soon As In-Region InterLATA Relief Is Obtained in One State.

Even if a BOC never specifically seeks permission to engage in manufacturing, Section 273(a) expressly grants such permission "if the Commission authorizes that Bell operating company or any Bell operating company affiliate to provide interLATA services under section 271(d)." The NPRM (at ¶ 8) tentatively concludes that the grant of interLATA authority in any one in-region state is sufficient to

⁷ Section 3(4), 47 U.S.C. § 153(4) defines "Bell operating company" not to include "an affiliate of any such company" unless the affiliate is a "successor or assign of any such company that provides wireline telephone exchange service."

authorize manufacturing anywhere by that BOC. Ameritech supports that tentative conclusion and urges that it be made final. As the NPRM observes (*id.*), the legislative history makes it plain that Congress intended that result. Furthermore, any contrary interpretation would face immediate practical problems. In particular, a misguided attempt to make the removal of the manufacturing prohibition strictly follow after the geographic removal of the interLATA prohibition would have to concede that the BOCs are authorized for “out-of-region” manufacturing already. The tentative conclusion proposed by the Commission avoids these problems by following the will of Congress as expressed in the statute and the legislative history, and that conclusion ought to be adopted.

C. Joint BOC Manufacturing Is Prohibited.

In the NPRM (at ¶ 9), the Commission observes that Section 273(a) provides that “neither a Bell operating company nor any of its affiliates may engage in . . . manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.” Based on this language, the Commission tentatively concludes that joint manufacturing is prohibited “between or among (1) unaffiliated RHCs; (2) unaffiliated BOCs that are not under the ownership or control of a

common RHC; and (3) an RHC and a BOC that is not affiliated with that RHC.”

Ameritech supports the Commission’s tentative conclusion as a correct reading of Section 273(a) — except that, as discussed below,⁸ this conclusion must not be extended so far as to forbid close collaboration among the BOC regions under Section 273(b).

*D. Section 273’s Conditions Apply Only to
BOCs Actually Engaged in Manufacturing*

In addressing Section 273(c), which requires the disclosure by BOCs of protocols and technical requirements useful to manufacturers, the NPRM (at ¶ 17) observes that these disclosure requirements “apply on their face to all BOCs”, but seeks comment on the whether they actually apply only to BOCs that are authorized to manufacture under Section 273(a). Elsewhere in the NPRM (at ¶ 63), the same question is raised concerning BOC equipment procurement and sales under Section 273(e).⁹

⁸ See discussion beginning on p. 10, *infra*.

⁹ Presumably, the Commission intended this question to apply to all aspects of Section 273(e), including the joint network planning and design requirements of Section 273(e)(3). But even if that was not the case, Ameritech asserts that the same rule should apply throughout Section 273.

Ameritech believes that the Commission should conclude that neither the information disclosure rules of Section 273(c) nor the equal procurement rules of Section 273(e) apply to a BOC unless and until that BOC is actually engaged in manufacturing. This is the only interpretation that is supported by the statutory language. Of course it is true, as the NPRM points out, that the limitation is not laboriously repeated in each and every sub-subparagraph where it might apply,¹⁰ but no such endless repetition should be necessary when the limitation is very clearly stated in the *overall* enabling provision in Section 273(a), which says, “A Bell operating company may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, . . . *subject to the requirements of this section . . .*” [italics added]. This language clearly shows that Sections 273(c) and 273(e) — the only two subsections that impose any “requirements” on BOCs as such — have been inserted into the law

¹⁰ Thus in NPRM ¶ 63 the Commission says, “With the exception of Section 273(e)(4), the provisions of Section 273(e) apply on their face to all BOCs.” While it is true that Section 273(e)(4) is one exception, Ameritech submits that Section 273(e)(1) is another. Section 273(e)(1) is entitled “Non-discrimination Standards for Manufacturing” and its rules apply only “for the duration of the requirement for a separate subsidiary including manufacturing under this Act.” Because the manufacturing subsidiary rule (imposed by Section 272(a)(2)(A)) cannot be effective until the BOC is authorized to engage in manufacturing, Section 273(e)(1) applies only where actual manufacturing is going on.

only to serve as qualifications upon what would otherwise be the unrestrained right of an authorized BOC to show favoritism for its *own* manufacturing operations. They are certainly not meant to be stand-alone requirements in and of themselves.

This is surely the reading that is supported by the legislative history, for nowhere in that history is there anything to suggest that the BOCs, who had been barred from telecommunications equipment manufacturing since 1982, had nevertheless been engaged in discriminatory procurement practices that cried out for Congressional correction even *without* their receiving any manufacturing relief under the new law. Conversely, there is no discernible reason, and no explanation in the legislative history, why, if it were true that the various conditions of Sections 273(c) and 273(e) became effective immediately upon enactment of the law, there are no *additional* requirements that would take effect after the BOCs finally *are* authorized to engage in telecommunications equipment manufacturing. In sum, the Commission should adopt a conclusion that Sections 273(c) and 273(e) do not apply unless and until a BOC is engaged in manufacturing.¹¹

¹¹ In the NPRM, the Commission states the issue as whether the conditions apply to all BOCs or only to BOCs who are *authorized* for manufacturing. Ameritech, however, suggests that if the condition does not apply to all BOCs, then it should only apply to those who are *actually* manufacturing.

(Footnote Continued . . .)

II. Section 273(b): Collaboration, Research, and Royalties

A. *The Act Does Not Prohibit Collaboration Among RBOCs.*

As the NPRM recognizes, even before the BOCs have obtained any in-region interLATA relief, Section 273(b) expressly permits them to collaborate with manufacturers, engage in manufacturing research, and enter into royalty agreements.¹² However, the NPRM (at ¶ 11) tentatively concludes that a BOC's ability to collaborate with manufacturers does *not* include collaborating with the other BOCs.¹³

(Footnote Continued . . .)

Ordinarily, of course, there would be little difference between those who are authorized for manufacturing and those who are engaged in it, but the structure of Section 273 is highly unusual in that the BOC is not allowed to seek manufacturing relief independently; it can only obtain relief as unavoidable "fallout" from in-region interLATA relief under Section 271.

¹² The language of subsection 273 (b) is:

(b) COLLABORATION; RESEARCH AND ROYALTY AGREEMENTS—

(1) COLLABORATION—Subsection (a) shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

(2) CERTAIN RESEARCH ARRANGEMENTS; ROYALTY AGREEMENTS—

Subsection (a) shall not prohibit a Bell operating company from—

- (A) engaging in research activities related to manufacturing, and
- (B) entering into royalty agreements with manufacturers of telecommunications equipment.

¹³ Specifically, the tentative conclusion is "that the broad language of Section 273(b)(1) does not permit close collaboration in either of the following two situations: (1) between a BOC or an RHC and the manufacturing

(Footnote Continued . . .)

Ameritech submits that that tentative conclusion is not a correct reading of the statute and should not be made final. The plain meaning of Sections 273(a) and 273(b), when they are read together as they should be, is that conjunctional (or “joint”) manufacturing is prohibited, but *collaboration* with a manufacturer is *permitted*. In other words, even while each RBOC is forbidden, under subsection (a), to “engage in . . . manufacturing in conjunction with” another RBOC, still the permissive qualification found immediately following in subsection (b) provides that the prohibition in subsection (a) “shall not prohibit . . . close collaboration with *any* manufacturer” [italics added]¹⁴ — which plainly must include, of course, close collaboration with other RBOCs who have obtained manufacturing authority.

Not only is that the plain meaning of the words Congress chose to use, but it is easy to discern the logical Congressional purpose underlying the distinction between joint manufacturing and collaboration with manufacturers. Congress might surely choose to rule out the possibility of a manufacturer owned by all of the RBOCs in common,

(Footnote Continued . . .)

affiliate of another unaffiliated BOC or RHC; or (2) between the manufacturing affiliates of two unaffiliated BOCs or RHCs”. NPRM at ¶ 11.

¹⁴ See full text of Section 273(b), quoted note 12, *supra*.

much as they used to own Bellcore or as the Bell System used to own Western Electric — for those are indeed the most readily imaginable examples of “conjunctional” arrangements — and yet still choose to permit the mere occasional collaboration among the various RBOCs as independent entities.

Furthermore, the conjunctional manufacturing referred to in subsection (a) will never be an issue until both of the RBOCs in question have succeeded in obtaining their in-region interLATA and manufacturing authority, while the collaboration with manufacturers authorized in subsection (b) will often be an issue for BOCs whose own manufacturing relief has not yet been granted. Thus these are different cases, and if Congress treated them differently, it did so deliberately and intentionally. And when Congress specifically identified the other RBOCs in the rule against RBOC joint manufacturing, but omitted to mention them at all in connection with close collaboration, there is no reason whatever to suppose that any rule against closely collaborating with another RBOC could have been intended.

Moreover, a rule against close collaboration among RBOCs in regard to manufacturing could have severe and unintended results in practical application. If, for example, an RBOC, after being authorized to engage in manufacturing under Section 273, were to acquire an existing telecommunications manufacturer, such a rule might require

the acquired company to stop selling its equipment to any of the other RBOCs — unless it were somehow able to continue supplying those RBOCs with telecommunications equipment without at the same time seeming to be “collaborating” with them. There is no reason to suspect that Congress could have intended such a strange outcome, and therefore the Commission should not adopt such a rule.

In addition, the only reason given in the NPRM in support of the proposed rule against BOC collaboration is that it would be “consistent with our tentative conclusion in paragraph 9,” but this is flawed reasoning. In paragraph 9, as already discussed,¹⁵ the Commission correctly finds that Section 273(a) forbids the BOCs to “engage in” manufacturing “in conjunction with” each other. But it is quite unnecessary to prohibit BOC collaboration just to achieve consistency with 273(a). In fact, it is evident that Congress did not intend for subsection (b) to be construed consistently with subsection (a) at all, but in direct *contrast* to it, since subsection (b) is a list of the activities that subsection (a) does *not* prevent. As already noted, each RBOC is forbidden in subsection (a) to “engage in . . . manufacturing in conjunction with” another RBOC, but the correct interpretation of the

¹⁵ See p. 6, *supra*.

proviso in subsection (b) makes it clear that the rule against conjunctional manufacturing “shall not prohibit . . . close collaboration with any manufacturer.”¹⁶ Thus the only way to bring true internal consistency to Section 273 is to read it to say that although BOC conjunctional manufacturing is barred, close collaboration with manufacturers is always allowed, even in the case of other BOCs.

Accordingly, the Commission should abandon its tentative conclusion, and should make clear instead that the ability of an RBOC to collaborate closely with manufacturers includes the ability to collaborate closely with any other RBOC that has obtained permission to be a telecommunications equipment manufacturer under Section 273.

*B. No Further Rules Are Necessary for
Manufacturing Research or Royalties.*

Section 273(b)(2) also provides that BOCs, even while they remain barred by Section 273(a) from actual manufacturing, may nevertheless conduct research activities related to manufacturing and enter into royalty agreements with manufacturers. These provisions seem plain enough, but the NPRM (at ¶ 12) is troubled that the 1996 Act does not

¹⁶ Furthermore, any possible ambiguity is further dispelled by the fact that the literal words of subsection (b) do not just permit close collaboration with *manufacturers*, but prominently emphasize that the permission applies to “*any*” manufacturer.

define the terms “research activities” or “royalty agreements.” Thus, the Commission seeks comment on whether it should adopt an interpretation that strives to preserve BOC incentives to research and develop innovative products, or whether it should seek to limit the “anticompetitive incentives” that would allegedly flow from the receipt of royalties.¹⁷ Ameritech, however, submits that Section 273(b)(2)(A) and Section 273(b)(2)(B) speak plainly for themselves and that there is no need for any further elaboration upon their meaning.

First of all, ¶ 12 recites dictionary definitions of “royalty” that involve payment for the use of the payee’s intellectual property. This type of royalty was never held to be improper under the AT&T Decree’s manufacturing ban and, therefore, would not have had to be exempted in Section 273(b)(2) from the manufacturing ban in Section 273(a). The type of royalty arrangements that were held to be improper under the AT&T Decree were those under which the BOC would fund development of a product by an independent manufacturer and, in return, would “receive royalties on the sale of the product to

¹⁷ For example, the Commission speculates that “if the BOC’s royalty is paid per unit of sales, or tied to the purchase price of the equipment, the BOC may have substantial incentives to favor equipment on which it can collect a royalty, even if such equipment is inferior to competing equipment in quality or higher in price” NPRM at ¶ 12.

third parties if it was successfully developed.”¹⁸ This type of royalty was said to constitute “revenue sharing.” According to the D.C. Court of Appeals, this royalty arrangement constituted “manufacturing” to the extent that the BOC had a “direct and continuing share in the revenues of the manufacturer.”¹⁹

By including Section 273(b)(2) in the Act, Congress made permissible the above-described “funding/royalty” arrangements that otherwise would have been prohibited by the Act’s ban on “manufacturing.” Therefore, the Commission has no authority to reject what it refers to as a “broad interpretation” of the term “royalty arrangement.”

Furthermore, the Commission’s analysis suggesting the need for a “strict” construction to prevent anticompetitive abuses is faulty. Indeed, ¶ 12 of the NPRM assumes a BOC would purchase inferior or overpriced products because of the royalty it would receive on, or as a result of, the purchase. But it would be irrational for a BOC to purchase high price, low quality equipment. The BOCs, like their competitors, need the best equipment at the lowest prices to effectively compete. The risk of loss of business to competitors would far

¹⁸ *United States v. Western Electric Co.*, 12 F.3d 225, 228 (D.C. Cir. 1993).

¹⁹ *Id.*, 12 F.3d at 232.

outweigh the possible gain in the form of royalties. Also, it has been said that funding/royalty arrangements are procompetitive, since they “are likely to enhance competition in telecommunications products by providing a new source of funding smaller companies with innovative ideas.”²⁰

Moreover, the negative view of royalty arrangements expressed in the NPRM is contrary to the legislative history and intent behind Section 273. It must be recalled that receiving royalties from manufacturers, to the extent it was forbidden by the AT&T decree, was forbidden right up until the time that decree was dissolved by the new

²⁰ *Id.*, 12 F.3d at 243 (Williams, J., dissenting). Judge Williams elaborated on this point as follows:

BOCs have a comparative advantage in judging the prospects for investments in research and development of products complementary to their business, and an obvious interest in ensuring that such innovation occurs. They thus can diminish the imperfection of financial markets due to normal lenders’ lack of information about the market and the technology. The funding/royalty arrangement increases the likelihood of such financial assistance, for it enables the BOC to commit capital in a form that entitles it to share in the high returns on very successful projects, just as a wildcatter arranges to share in the rare success among exploratory oil and gas wells. Similarly, just as a wildcatter assembles leases in the area of intended exploration so as to capture as much as possible of the value of the information that a successful well will yield (and to prevent free riding by others), so a BOC taking substantial risk on a new technology would want to diminish free-riding by other buyers, which is precisely what the royalty arrangement permits.”

Id.

legislation,²¹ but that Congress, even while temporarily retaining the manufacturing prohibition generally, has acted decisively in Section 273(b)(2) to *repeal* the royalty restriction, effective immediately. Thus even though the Commission's analysis in ¶ 12 is able to find that the receipt of royalties involves "potential anticompetitive abuses," the fact is that Congress has already considered those same possibilities of abuse and has found them slight enough to allow the BOCs to receive royalties anyway. Adopting a "strict" construction would be second-guessing the law instead of implementing it. Accordingly, the Commission should refrain from adopting any further rules or taking any other action to expand or contract the plain meaning of Section 273(b)(2).

III. Information Disclosure Under Section 273(c).

Section 273(c) governs BOC disclosure of information to its manufacturing competitors. Ameritech has already explained why the provisions of Section 273(c) do not apply to a BOC unless and until that BOC is actually engaged in manufacturing. Thus the following

²¹ See *United States v. Western Electric Co.*, 12 F.3d 225 (D.C. Cir. 1993), where it was held — over the objection of the Department of Justice, it should be noted — that the receipt of royalty payments from a manufacturer would cause a BOC to become an "affiliate" of that manufacturer, resulting in a violation by that BOC of the decree's prohibition against manufacturing.

discussion is limited to the interpretation of Section 273(c) as it may apply after manufacturing authority has been obtained.

A. *No Further Network Disclosure Requirements
Need Be Imposed Under Section 273(c)(1).*

Section 273(c)(1) requires BOCs to disclose “protocols and technical requirements” related to their telephone exchange service.²²

Although the NPRM acknowledges (at ¶¶ 15–17) that the BOCs are already subject to extensive network information disclosure requirements, many of them recently imposed as part of the implementation of other sections of the Telecommunications Act of 1996, the Commission tentatively concludes (NPRM at ¶ 18) that because those rules did not “address” the “specific needs of manufacturers,” they are *ipso facto* inadequate. However, the Commission does not identify any particular respect in which a manufacturer might find disclosures under the existing rules not suitable for its purposes, notwithstanding that the disclosures might originally have been made with some other type of entity in mind. Accordingly unless some manufacturer is able to

²² Section 273(c)(1) states: “Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities.”

demonstrate that there is some type of valuable network information that it could not glean from the disclosures made under the existing rules, the Commission should abandon this tentative conclusion.

Ameritech acknowledges that the basis of the Commission's proposal to adopt an expansive interpretation of the network disclosure rules related to manufacturing is its desire to thwart the many examples of possible or potential manufacturing misconduct identified in the NPRM's analysis. Ameritech asserts, however, that it must be recognized that these potential forms of misconduct have no current basis in recent practical experience, since the BOCs have been barred from telecommunications equipment manufacturing for fifteen years. Accordingly the anticompetitive possibilities in the analysis largely resemble the allegations made against Western Electric when it was part of the Bell System. As already noted, even Judge Greene in 1982 found the manufacturing part of the government's divestiture case not especially convincing.²³ Moreover, since then the RBOCs have been fragmented into discrete geographical entities, none of whom has anywhere near the overwhelming market power that the Bell System had in the market for the purchase of manufactured telecommunica-

²³ See discussions at p. 1 and note 1, *supra*.